

October 31, 1950

Op. No. 50-241

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ARIZONA ATTORNEY GENERAL

Mr. P. A. Isley
State Dairy Commission
State House
Phoenix, Arizona

Dear Mr. Isley:

This is in reply to your letter of October 13, 1950,
wherein you ask the following question:

"Is it legal or permissible to
serve soft drinks such as root
beer, coca cola and other
similar soft drinks from the
freezing room of a store known
as Zesto or Dairy Queen or
other similar soft ice cream
and custard plants?"

In our opinion to you under date of August 22, 1949
we answered the following question in the affirmative:

"May toppings, syrups, flavor-
ings, stabilizers, fresh
crushed fruits, eggs or egg
powders be stored in the
freezing room of an ice cream
manufacturing plant?"

In that opinion we quoted the law respecting dairy products
distributing plants and milk products manufacturing plants.
In arriving at our opinion regarding the present question
we will of necessity follow the same reasoning that we used
in the former opinion. We would like to quote a portion of
that opinion:

" * * * It appears further to
us that Section 50-926, ACA
1939, entitled 'Milk Products
Manufacturing Plant' when it
refers back to Section 50-
923, 'Dairy Products Distri-
buting Plant' requires the
milk products manufacturing
plant to be equipped the
same as the Dairy Products
Distributing Plant, as to
building, construction,

surrounding cleanliness, sanitation, etc., but does not refer to the use to which the milk products manufacturing plant may be put to providing it is sanitary and meets the other requirements."

We are assuming, of course, at all times that this soft ice cream machine, whether it is Zesto, Dairy Queen or any similar plant, is a dairy products manufacturing plant, or at least the process of changing the ice cream mix to this soft ice cream is a manufacturing process. In arriving at our opinion in this present question we are assuming that an individual operating a business wherein he has one of these soft ice cream machines may do anything that is sanitary that is not prohibited, Section 50-923 ACA 1939, among the other things, says:

" * * * No gas engines, compressors, water pumps, boilers or other similar equipment shall be installed within any room wherein dairy products shall be openly handled.
* * *"

Soft ice cream is a dairy product, and the method of handling it from the machine to the consumer could very easily be construed as being openly handled. (Then, in addition to the construction of the plant and the place where it is constructed, we have these inhibitions, i.e., "No gas engines, compressors, water pumps, boilers or other similar equipment shall be installed within any room wherein dairy products shall be openly handled.")

We have failed to find wherein the legislature has prohibited the serving of soft drinks such as root beer, coca cola or other similar soft drinks from the freezing room of a store known as Zesto or Dairy Queen, wherein soft ice cream is manufactured. There being no apparent inhibition we are therefore of the opinion that an individual may serve these soft drinks from a room wherein soft ice cream is manufactured by one of these soft ice cream machines.

Very truly yours,

FRED O. WILSON, Attorney General

CHAS. ROGERS

Assistant Attorney General

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